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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/207,282	12/08/1998	MICHAEL R. CONBOY	11729.184US0	6584

7590 10/27/2003

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EXAMINER

BUTLER, MICHAEL E

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 10/27/2003

29

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 3653

SW

DETAILED RESPONSE

1. Applicant has petitioned for reconsideration to have a late Reply Brief entered and considered as the Examiner's Answer was mailed to the office of the principle attorney of record rather than the associate attorney to which the prosecution was re-delegated to. Applicant co-requested at the end of the Associate Power of Attorney authorization.

An Examiner's Answer was mailed 11/23/01 to the principle attorney of record. A Reply brief was filed in duplicate on 3/4/02. The Reply Brief was denied entry as having been filed more than 2 months from the mailing of the Examiner's Answer.

Applicant contends the 11/23/01 mailing should have gone to the associate attorney rather than the principle attorney, and therefore the 11/23/01 response period initiation is improper and that a 1/4/02 re-mailing of the Examiner's Answer commences the response period, and in the alternative applicant's request for extension ought cover any extension.

The record shows an item only identified in PALM as Miscellaneous Communication to Applicant left work group 3650 on 1/3/02 and was mailed on 1/4/02 to the address of the associate attorney of record from a 12/28/02 change of address. No copy of what was mailed is identified in the case file. The jacket of the case file has a notation "Remail 1/4/02" under the Examiner's Answer of paper 18. The jacket corroborates applicant's contention that that the mailing of 1/4/03 was a re-mailing of the Examiner's Answer. It is believed that whoever handled the status enquiry and re-mailing could not access the examiner and obtain new copy's due vacation proximate the mailing so probably photocopied a previously mailed copy of the examiner's answer and omitted inclusion of the re-mailing in the file, identifying the mailing on the cover, and omitting to restart the response period.

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A re-mailing of an Examiner's Answer restarts a response period. Accordingly, the re-mailing of 1/4/02 restarts the period and the response of 1/4/02 is deemed timely as it was within 2 months of response period of the re-mailed Examiner's. As 37 CFR 1.193 does not specify a minimum number of three copies of a Reply Brief like the Appeal Brief, Applicant's two copies were deemed timely.

According Applicant's Petition to have the Reply Brief filed more than two months from the mailing of the Examiner's Answer considered is GRANTED.

2. The applicant's arguments in the Reply Brief has been fully considered but the arguments are unpersuasive in overcoming the rejections.

A terminal disclaimer is used to overcome double patenting rejections. The double patenting rejection was removed due the inclusion of the terminal disclaimed as it simplified issues for appeal and did not present new issues. The advisory explicitly stated the 130 affidavit withheld beyond final and more than one action after the rejection being asserted was not accepted as it would present new issues after final and was explicitly identified as not being accepted as untimely in accord with MPEP 716.01.

Since applicant did not present a 131 affidavit, a procedure for antedating a prior art reference is moot.

Entry of an affidavit is performed by a Docket Clerk, not the examiner. Acceptance is of the affidavit by the examiner. MPEP 716.01 proscribes the time constraints under which the examiner must accept the affidavit. As applicant withheld the filing of the affidavit more than one action after the rejection was initially asserted final, the time for acceptance of the affidavit passed. Any affidavit presented after final must be directed solely at new issues raised in the previous action to be accepted. Acceptance of a late affidavit is at the discretion of the examiner, who elected not to

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reopen prosecution and apply the other known art. The response is not a new issue, a procedural rebuttal to an applicant argument about examiner's declining to accept the latent affidavit and hence reopen prosecution after final premised by accepting applicant's latent affidavit.

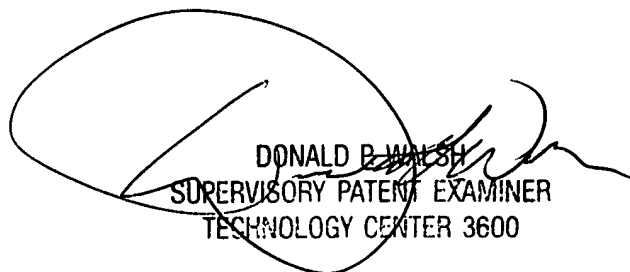
Object oriented programming was not used as a rejection. Examiner simply pointed out that before global parameter passing became disfavored by object oriented programming, global parameter passing was the normal parameter passing technique- certainly not new just disfavored with time.

The examiner had initially taken official notice on the trivial element recalling his software engineering experience predating the object oriented days until applicant sought to challenge the official notice and compelling the location of the global parameter passing in the Burney and Tau et al. references.

3. The application is being forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.



Michael E. Butler
Examiner



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